

State of California
BOARD OF EQUALIZATION
DIESEL FUEL TAX REGULATIONS

Regulation 1423. TWO-PARTY EXCHANGE.

Reference: Sections 60051, 60052, 60053, 60054, 60063, 60131, 60201, 60204, 60604, and 60605, Revenue and Taxation Code.

(a) GENERAL. In a typical two-party exchange, two suppliers who own diesel fuel in terminals, i.e., who are position holders (pursuant to Section 60010 of the Revenue and Taxation Code), agree to give each other access to the diesel fuel each owns. Both suppliers have customers in the same terminal areas. One supplier (the delivering supplier) owns fuel in one terminal, and the other supplier (the receiving supplier) owns fuel, usually in a different terminal. Each supplier agrees to exchange fuel it owns for fuel the other supplier owns. A two-party exchange contract allows each supplier to have rack removal capability at a terminal where the other supplier is a position holder, in order to supply fuel to its customers in that terminal area. The receiving supplier takes the place of the delivering supplier when the diesel fuel is removed from the terminal at the rack. A two-party exchange may involve fuel held in terminals located in one or more states and may involve one or more types of fuel. For purposes of this regulation, however, at least one of the terminals involved in a two-party exchange must be located in this state, and the requirements for reporting transactions to the Board pursuant to this regulation pertain only to transactions involving terminals located in this state.

(b) DEFINITIONS.

(1) Notwithstanding Section 60048 of the Revenue and Taxation Code, "two-party exchange" means a transaction, other than a sale, that occurs at the time of removal of diesel fuel across the rack and that meets all the following conditions:

(A) The terminal operator, delivering supplier, and the receiving supplier are each registered with the Board to file electronically and have filed electronically with respect to the subject two-party exchange; and

(B) The terminal operator treats the receiving supplier in its books and records as the person that removes the diesel fuel across a terminal rack for purposes of reporting the two-party exchange to the Board; and

(C) The two-party exchange is the subject of a written contract between the delivering supplier and the receiving supplier, acceptable evidence of which includes, but is not limited to, exchange statements, exchange differential invoices, exchange reconciliations, or any other similar writing between the parties; and

(D) All of the reporting requirements set forth in subdivisions (d) and (e) of this section are met.

(2) "Delivering supplier" means a supplier licensed pursuant to Section 60131 of the Revenue and Taxation Code, who is the position holder of the diesel fuel in the terminal on whom the diesel fuel tax is imposed on removal of diesel fuel from the rack for all purposes other than for a two-party exchange.

(3) "Receiving supplier" means a supplier licensed pursuant to Section 60131 of the Revenue and Taxation Code, on whom the diesel fuel tax is imposed only on removal of diesel fuel from the rack as the receiving supplier under a two-party exchange.

(4) "Terminal" as defined in Section 60033 of the Revenue and Taxation Code, includes, for purposes of this regulation, a terminal located at a refinery.

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(c) LIABILITY FOR TAX.

(1) The delivering supplier is primarily liable for taxes imposed under Section 60051 or Section 60052(a) of the Revenue and Taxation Code, except, when a transaction satisfies the conditions and requirements for a two-party exchange, the delivering supplier shall be relieved of diesel fuel tax liability and the receiving supplier shall be liable for payment of diesel fuel taxes on the diesel fuel removed pursuant to the two-party exchange.

(2) The receiving supplier must report the two-party exchange and remit any tax due on a tax return filed within three months after the close of the calendar month in which the diesel fuel was received. The receiving supplier may claim a refund for any amounts applied by the Board to the account of the receiving supplier under a two-party exchange contract. When all parties report a transaction as a two-party exchange, the receiving supplier may not file a claim for refund of the tax on the grounds that the transaction was not a two-party exchange.

(3) If the receiving supplier fails to report or remit taxes in conformity with this regulation, then the delivering supplier shall remain primarily liable for taxes due on the removal of the diesel fuel from the rack.

(d) REPORTING REQUIREMENTS – GENERALLY

(1) The terminal operator must report to the Board the two-party exchange of diesel fuel between the delivering supplier and the receiving supplier.

(2) The terminal operator, the delivering supplier, and the receiving supplier must each use the same identifying information (e.g., bill of lading number) to refer to or otherwise report the subject two-party exchange.

(3) The terminal operator, the delivering supplier, and the receiving supplier must each enter the same fuel type on any report that includes a two-party exchange.

(e) REPORTING REQUIREMENTS – DELIVERING AND RECEIVING SUPPLIERS. The following reporting requirements must be met in order for an exchange of diesel fuel to qualify as a two-party exchange and to shift the diesel fuel tax liability from the delivering supplier to the receiving supplier.

(1) The delivering supplier must report the two-party exchange and identify the receiving supplier to the terminal operator; and

(2) The delivering supplier must report to the Board a tax-free delivery of diesel fuel to the receiving supplier; and

(3) The receiving supplier must report to the Board a tax-free receipt of diesel fuel from the delivering supplier; and

(4) The receiving supplier must report to the Board the rack removal of diesel fuel to its customers and the amount of tax due.

(f) OPERATIVE DATE. The provisions of this regulation are operative January 1, 2007.

History: Adopted June 27, 2006, effective October 8, 2006.